

For general information regarding the sales tax liabilities of construction contractors in Illinois, see the Department's regulations at 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL.)

May 17, 2006

Dear Xxxxx:

This letter is in response to your letter dated June 3, 2005, in which you request information. We apologize for the delay in responding. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Company X is in the process of updating their sales and use tax guidelines as they expand their operations into additional states. We are in need of your assistance to ensure that Company X is correctly complying with your state's taxation requirements.

Fact Pattern

Company X is a service company (subsidiary) headquartered in the state of STATE. Company X's services are performed in multiple states. Company X's operations can best be described as construction, construction management, rehabilitation and corrosion control services for pipeline, utility, fiber and water industries. Company X enters into contracts with its customers for services. Services can be billed as time & material jobs or lump-sum service bid arrangements. Company X generally purchases and provides all construction materials and supplies as a component of the contract with the customer. Primary service categories are as follows:

- ***Engineering & Technical Services***

Company X provides customers with engineering support services, site testing, and global position satellite (GPS) surveys.

- ***Construction Services***

Company X provides construction services on real property. These services include excavation and underground pipeline repairs and maintenance. Company X employs

and provides construction crews for the operation of Company X-owned equipment used in performing the construction services.

- ***Horizontal Directional Drilling Services***

Company X provides real property drilling services necessary for the installation of pipelines, conduit, cable and remediation wells. Company X has installed pipe sizes with diameters up to 60 inches and has completed continuous bores up to 7,100 feet in length.

On the basis of the above fact pattern, please provide a taxability decision for the following sale and purchase transactions.

Sale Transactions *(should a sales tax be collected from the customer):*

	<u>Taxable</u>	<u>Non- Taxable</u>
Engineering Services	_____	_____
Technical Services - Site Survey	_____	_____
Construction Management Services (oversight of project)	_____	_____
Real Property Construction Services (time and material contract)	_____	_____
Real Property Construction Services (lump-sum contract)	_____	_____
Pipeline Installation (new installation)	_____	_____
Pipeline Repair Services	_____	_____
Excavation Services	_____	_____
Survey Services (surveys to assess existing underground pipe, etc. for customers)	_____	_____
Equipment Rental (with operator; per hour charge)	_____	_____
Equipment Rental (no operator; daily rental rate)	_____	_____

Purchase Transactions *(should sales/use tax be remitted on the following items):*

	<u>Taxable</u>	<u>Non- Taxable</u>
Pipeline Materials <i>(incorporated into realty)</i>	_____	_____
Mobile Equipment <i>(used for excavation & installation)</i>	_____	_____
Survey Service Materials <i>(copper wire, etc. not incorporated into realty)</i>	_____	_____
Drilling Fluids <i>(used for drilling services)</i>	_____	_____
Mud Cleaning System <i>(does this qualify for pollution control Exemption? Cleans mud and releases mud and water back into environment)</i>	_____	_____

Additional Questions:

1. What if Company X purchases installation and excavation equipment for initial delivery into the state of STATE and subsequently uses the equipment throughout multiple states on a per-job basis. Is any tax due to your state on this limited period equipment usage within your state when tax has been paid to the state of STATE on the purchase of the equipment (assuming sales tax rate of 6.0%).
2. What if Company X purchases large quantities of pipeline materials for initial delivery to the state of STATE and subsequently transports and installs some of the pipeline materials in your state. Is any tax due on the material purchases installed in your state?
3. Does your state provide for a sales/use tax exemption for materials incorporated into realty within an enterprise zone (or any similar type of zone)? If yes, what is the process for pursuing an exemption from sales tax on the purchase of the materials?
4. Does your state provide for any special sales/use tax exemption for materials sold to pipeline, utility, fiber, or water companies or cooperatives for incorporation into real property? If yes, please provide detail.

We appreciate your assistance with this request for information. In addition to providing a response to all of the questions above, please provide copies or make reference to any statutes, regulations, letter rulings or publications applicable to Company X's industry operations. Do not hesitate to contact me for additional information.

DEPARTMENT'S RESPONSE

The Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See the Department's regulations at 86 Ill. Adm. Code Part 130. The Use Tax Act, 35 ILCS 105/1 et seq., imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code Part 150. If no tangible personal property is transferred to the customers, then no Retailers' Occupation Tax or Use Tax would apply.

Likewise, the Illinois Service Occupation Tax, 35 ILCS 115/1 et seq., and Service Use Tax, 35 ILCS 110/1 et seq., are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code Part 140 and Part 160. If no tangible personal property is transferred to the customers incident to the services provided, then no Service Occupation Tax nor Service Use Tax would apply. If tangible personal property is transferred incident to the providing of a service, those transfers may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. See 86 Ill. Adm. Code 140.101 through 140.109.

For general information regarding the sales tax liabilities of construction contractors in Illinois, we suggest you take a look at the Department's regulations at 86 Ill. Adm. Code 130.1940 and 130.2075. Regulations regarding Enterprise Zones are found at 86 Ill. Adm. Code 130.1951. The Department's General Information Letters and Private Letter Rulings are also available on the website. These are useful for finding guidance on specific issues.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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